

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs August 14, 2007

STATE OF TENNESSEE v. NOAH CHRIS RUSS

Appeal from the Circuit Court for Lawrence County

No. 23813-14; 23938-39 Robert L. Jones, Judge

No. M2007-00676-CCA-R3-CD - Filed March 10, 2008

Appellant, Noah C. Russ, pled guilty in Lawrence County to nineteen counts of TennCare Fraud and twenty counts of Obtaining Drugs by Fraud. The trial court placed Appellant on probation. His probation was subsequently revoked and reinstated with the condition that Appellant attend the drug court program. Appellant failed to meet the drug court program requirements and was terminated from the program. The trial court revoked Appellant's probation and ordered him to serve his original six-year sentence in incarceration. Two years later, Appellant filed a motion requesting that the trial court give him sentencing credits for the time he spent in the drug court program. The trial court denied the request. On appeal, Appellant argues that the trial court erred in denying his request. Because the denial of a request for sentencing credits is not a proper ground for appeal under Rule 3(b) of the Tennessee Rules of Appellate Procedure, we dismiss the appeal.

Tenn. R. App. P. 3 Appeal as of Right; Appeal is Dismissed.

JERRY L. SMITH, J., delivered the opinion of the court, in which JOHN EVERETT WILLIAMS, and ALAN E. GLENN, JJ., joined.

Noah C. Russ, Pro Se, Clifton, Tennessee.

Robert E. Cooper, Jr., Attorney General & Reporter; Lacy Wilbur, Assistant Attorney General; and Mike Bottoms, District Attorney General, for the appellee, State of Tennessee.

OPINION

Factual Background

On March 10, 2003, Appellant pled guilty to nineteen counts of TennCare Fraud, a violation of Tennessee Code Annotated section 71-5-118, and twenty counts of Obtaining Drugs by Fraud, a violation of Tennessee Code Annotated section 53-11-402. The trial court placed Appellant on probation for all the offenses. In an order filed August 18, 2003, the trial court revoked Appellant's probation and reinstated probation with the condition that Appellant participate in the drug court program. He was required to actively participate in the drug court program, and if he was dismissed from the program, his probation would be revoked. On January 13, 2004, Appellant was terminated from participation in the drug court program. In an order dated November 11, 2004, the trial court revoked Appellant's probation and reinstated the original sentence of six years. It appears from the record and our research that Appellant did not appeal from this revocation.

On November 13, 2006, Appellant filed a pro se "Motion to Receive Credit for Time Spent on Community-Based Program." In this motion, Appellant asked the trial court to give him sentence credits for his time spent in the drug court program because the drug court program is a community-based alternative to incarceration. He filed an amended motion on March 8, 2007 requesting the same relief. On March 15, 2007, the trial court denied Appellant's motion stating that the drug court program is not a community-based alternative to incarceration. This appeal followed.

ANALYSIS

On appeal Appellant argues that the trial court erred in denying his motion for jail credits for his time spent in the drug court program. The State argues that Appellant does not have an appeal as of right under Rule 3(b) of the Tennessee Rules of Appellate Procedure.

Rule 3(b) of the Tennessee Rules of Appellate Procedure, which governs appeals of right by defendants in criminal cases, provides as follows:

In criminal actions an appeal as of right by a defendant lies from any judgment of conviction entered by a trial court from which an appeal lies to the Supreme Court or Court of Criminal Appeals: (1) on a plea of not guilty; and (2) on a plea of guilty or nolo contendere, if the defendant entered into a plea agreement but explicitly reserved the right to appeal a certified question of law dispositive of the case pursuant to and in compliance with the requirements of Rule 37(b)(2)(i) or (iv) of the Tennessee Rules of Criminal Procedure, or if the defendant seeks review of the sentence and there was no plea agreement concerning the sentence, or if the issues

presented for review were not waived as a matter of law by the plea of guilty or nolo contendere and if such issues are apparent from the record of the proceedings already had. The defendant may also appeal as of right from an order denying or revoking probation, and from a final judgment in a criminal contempt, habeas corpus, extradition, or post-conviction proceeding.

Tenn. R. App. P. 3(b). As stated above, there is an appeal as of right from an order revoking probation. However, in this case, Appellant is arguing only that the trial court should have granted him sentencing credits for time spent in the drug court program. The trial court's denial of Appellant's request for sentence credits does not fall under the enumerated actions from which an individual may appeal as of right. See *Jonathan Malcolm Malone v. State*, M2004-02826-CCA-R3-CO, 2005 WL 1330792, at *2 (Tenn. Crim. App., at Nashville, June 6, 2005) (dismissing defendant's appeal pursuant to Rule 3 from a denial of defendant's motion for jail credit); *State v. James Ray Bartlett*, No. M2002-01868-CCA-R3-CD, 2004 WL 1372847, at *2 (Tenn. Crim. App., at Nashville, June 16, 2004), *perm. app. denied*, (Tenn. Nov. 15, 2004) (dismissing defendant's appeal pursuant to Rule 3 from the denial of defendant's motion to receive jail credit as improper even when viewed as a motion to correct and/or amend judgment); *State v. Louis Clyde Jackson*, E2003-02019-CCA-R3-CD, 2004 WL 2387501, at *1 (Tenn. Crim. App., at Nashville, Oct. 26, 2004) (dismissing the defendant's appeal pursuant to Rule 3 from the denial of defendant's motion to correct and/or amend judgment); *State v. Greg Smith*, E2003-01092-CCA-R3-CD, 2004 WL 305805, at *1 (Tenn. Crim. App., at Nashville, Feb. 18, 2004) (dismissing defendant's appeal pursuant to Rule 3 from the denial of his motion to increase the number of pretrial jail credits awarded). Thus, Appellant has no appeal of right in the instant case and this appeal must be dismissed.

CONCLUSION

For the foregoing reasons, Appellant's appeal is dismissed.

JERRY L. SMITH, JUDGE